



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0068]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway and Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Venetian Causeway Bridge (West) across the Atlantic Intracoastal Waterway mile 1088.6, and the operating schedule that governs the Venetian Causeway Bridge (East) across Biscayne Bay, Miami Beach, FL. This action will extend the daily twice an hour opening schedule of the Venetian Causeway Bridges (East and West) to include weekends and Federal holidays. This action is intended to reduce vehicular traffic caused by the on-demand weekend and Federal holiday bridge openings.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-0068 in the

“SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Ruth Sadowitz, Coast Guard Sector Miami, FL, Waterways Management Division, telephone 305-535-4307, email ruth.a.sadowitz@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
AICW	Atlantic Intracoastal Waterway
FDOT	Florida Department of Transportation
FL	Florida
MHW	Mean High Water

II. Background Information and Regulatory History

On September 5, 2017, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway and Biscayne Bay, Miami, FL in the Federal Register (82 FR 41901). We received 2 comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499.

The Venetian Causeway Bridge (West), across the Atlantic Intracoastal Waterway, mile 1088.6, is a double leaf bascule bridge and has a vertical

clearance of 12 feet at Mean High Water (MHW) in the closed to navigation position and a horizontal clearance of 90 feet between fenders. The Venetian Causeway Bridge (East), across Biscayne Bay, at Miami Beach, FL is a double leaf bascule bridge with a vertical clearance of 5 feet at MHW in the closed to navigation position and a horizontal clearance of 57 feet between fenders. Presently, in accordance with 33 CFR 117.261(nn) and 33 CFR 117.269, the bridges shall open on signal, except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridges need only open on the hour and half hour.

Miami-Dade County, the bridge owner, and the Cities of Miami and Miami Beach requested the daily twice an hour operating schedule for both bridges be changed to include weekends and Federal holidays. This should provide relief to the increase vehicle traffic congestion on the weekends while meeting the reasonable needs of navigation.

IV. Discussion of Comments, Changes and the Final Rule

Of the 2 comments received, one was a political statement that had no bearing on the proposed regulation; the second comment was in favor of the operating schedule change. The submitter in favor of the change did suggest that there may be a negative impact to small entities on land economically if the bridge is open for an extended period of time allowing vessels that have been waiting to pass and vice versa for commercial vessels that missed the opening and have to wait until the next scheduled opening. While the Coast Guard does acknowledge that there may be additional vessels waiting for openings due to this change, it

should not have a substantial negative impact on land and maritime traffic as it mirrors the current operating schedule Monday through Friday.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the continued ability for vessels to transit the bridge during the twice-an-hour opening schedule. Vessels in distress, Public vessels of the United States and tugs with tows must be passed at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations

on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small

entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure

by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.261 by revising paragraph (nn) to read as follows:

§117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(nn) The Venetian Causeway Bridge (West), mile 1088.6, at Miami. The draw shall open on signal, except that from 7 a.m. to 7 p.m. daily, including Federal holidays, the draw need only open on the hour and half hour.

* * * * *

3. Revise §117.269 to read as follows:

§117.269 Biscayne Bay.

The Venetian Causeway Bridge (East), across Miami Beach Channel. The draw shall open on signal, except that from 7 a.m. to 7 p.m. daily, including Federal holidays, the draw need only open on the hour and half hour.

Dated: February 8, 2018.

Peter J. Brown,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District

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